

PLANNING COMMISSION MINUTES

DECEMBER 7, 2006

PUBLIC HEARING

DOCKET NO. 9-34-06

Change in zoning from C-1 Commercial Zoning to C-2 Commercial Zoning to permit Monument Sales on property located at 3204 Bardstown Road (Tax Block 87E, Lot 225), containing 0.41 acres and being in Louisville Metro.

Project Name:	Evans Monument Company
Owner:	Tom Evans Sr. 3204 Bardstown Road Louisville, KY 40205
Applicant:	R & J Corporation 2100 Gardiner Lane Suite 207 Louisville, KY 40205
Attorney:	Michael F. Tigue Middleton & Reutlinger 2500 Brown & Williamson Tower Louisville, KY 40202
Engineer/Designer:	Mindel, Scott & Associates Inc. 4545 Bishop Lane Suite 200 Louisville, KY 40218
Existing Use:	Monument Sales
Proposed Use:	Monument Sales
Form District:	Suburban Marketplace Corridor
Council District:	8 – Tom Owen
Representative:	Mindel, Scott & Associates – Eric Merton
Attorney:	Michael Tigue
Staff Case Manager:	Mike Wilcher, Planner II

Notice of this public hearing appeared in **The Courier Journal** on November 13, 2006, a notice was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

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The following spoke in favor of this request:

Michael Tigue, Middleton & Reutlinger, 2500 Brown & Williamson Tower,
Louisville, KY 40202

Tom Evans, Jr., 3204 Bardstown Road, Louisville, KY

Erik Merten, Mindel Scott & Associates Inc., 4545 Bishop Lane Suite 200,
Louisville, KY 40218

The following spoke in opposition:

No one spoke.

Interested Parties:

No one spoke.

AGENCY TESTIMONY:

Mike Wilcher presented the case and also showed a Power Point presentation showing zoning maps and photos of the site and the surrounding area. He said the site is currently used for sales only, and all work on the monuments takes place off-site. He said the Site Inspection Committee had suggested enhancing the sides of the buildings with windows; however, vandalism is a persistent problem and therefore the previously-existing windows have been boarded up and painted to match the brick façade.

SUMMARY OF TESTIMONY OF PROPONENTS:

Michael F. Tigue, attorney for the Applicant, showed "before and after" photos of the building and the lot, before and after the Evans Monument Company renovated the store and improved the property. He stated that the Applicant's rezoning request was necessitated by the issuance of Notice of Violation by the Metro Louisville Inspections, Permits & Licenses Department against Evans Monument, LLC. Mr. Tigue commented that the IP&L issued the Notice of Violation because the site is zoned C-1 Commercial District and "monument sales" are only permitted as of right in the C-2 Commercial District. Mr. Tigue noted that the present day sale of monuments does not involve any form of stonework. Monument sale companies simply display the monuments for sale to the consumer as any retail furniture store might do. Oftentimes, the monuments are ordered on site and shipped direct to the consumer's final location. As such, there does not appear to be any significant justification to require that "monument sales" be located in a C-2 Commercial District versus a C-1 Commercial District.

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Nevertheless, Mr. Tigie noted that the present Land Development Code does require their location in C-2 Commercial District and the present rezoning request was, therefore, necessary to bring the use into compliance.

Mr. Tigie noted further that the Applicant did in good faith previously contact the Louisville Metro Planning and Design Department to ascertain whether "monument sales" could be conducted in a C-1 Commercial District. Mr. Tigie stated that the Applicant described the type of activity involved in monument sales to the department's representative and was advised that it could be conducted in a C-1 Commercial District. Mr. Tigie stated that based upon the description given to department representative, it would seem natural that one would conclude that monument sales could be conducted in a C-1 Commercial District if the representative did not actually look at the classifications permitted use lists. As such, Mr. Tigie stated that the present situation appeared to be the result of an unfortunate misunderstanding by the Applicant, rather than a lack of good faith on the part of the Applicant.

Mr. Tigie proceeded by describing the substantial renovations and improvements that the Applicant had made to the property to open its monument sales business. Mr. Tigie presented before and after pictures to the Planning Commission to support his remarks. Mr. Tigie also noted that the monument sales business generated an extremely low volume of traffic and that coupled with the substantial improvements made to the location made the present use of the site a substantial improvement over preexisting conditions.

Mr. Tigie also noted that the Applicant was agreeable to installing additional landscaping along the adjacent residential property line as needed to fill in gaps along the common boundary. The Applicant suggested that it would be willing to install evergreens fifteen feet on center as needed to close the gaps where gaps in the existing buffering exist. Moreover, the Applicant's representative stated that the Applicant would remove the existing boards placed over the site's damaged exterior windows and would also work with staff to determine a more appropriate solution for the problem. Mr. Tigie further suggested that it would be unnecessary to remove the boards placed on windows on the rear side of the building because they are not visible to the general public and that any improvements to the windows will be limited to the sides of the building that are visible from Bardstown Road. Several members of the Planning Commission concurred with Mr. Tigie's remarks.

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Regarding the landscaping recommendations, Mr. Tigie said the applicant would be willing to follow staff's recommendations. Regarding the remnants of an old billboard, he said there was some confusion over whose property the billboard was on. If the billboard is on the applicant's property, the applicant has agreed to remove it. Mr. Evans said they have taken it upon themselves to pull out shopping carts, clean trash, etc. from the drainage easement.

Tom Evans, the applicant, discussed possibly alternatives to putting windows in the facades and the difficulty they have had with vandalism. He said the windows had been boarded up by the previous tenant due to the constant vandalism. He said the windows remain boarded, and drywalled over and sealed on the inside. He said the business owners next door, an auto glass repair shop, said they also had constant trouble with this. There was additional discussion between the applicant and the Commissioners about possible alternatives.

It was further noted that there was no opposition to the Applicant's rezoning request by neighboring or area property owners. Rather, it appeared from the limited remarks made that the Applicant's renovation and current use have been received very favorably by the adjacent community.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke.

REBUTTAL:

There was no need for rebuttal since no one spoke in opposition.

An audio/visual recording of the Planning Commission hearing related to this case is available in the Planning and Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the December 7, 2006 proceedings.

In a business session subsequent to the public hearing on this request, the Commission took the following action.

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Zoning

On a motion by Commissioner Wells-Hatfield, the following resolution was adopted:

WHEREAS, the Planning Commission finds that, based upon the Applicant's submittals into the record and public hearing testimony that the Applicant's Detailed District Development Plan and proposed zone change to C-2 Commercial District comply with all applicable guidelines and policies of the comprehensive plan (Cornerstone 2020) in that they comply with all applicable Community Form/Land Use Guidelines, including, but not limited to, Form District Policy 1.B.8 because the requested use is consistent with development patterns in the Suburban Marketplace Corridor Form District, which supports a variety of medium to high intensity land uses. In addition, the plan complies with Center Guidelines 2.1 (Locate in Activity Centers) and 2.5 (Mixture of Compatible Uses) since it is located within an established activity center that provides a mixture of compatible land uses. Connectivity to the site, as well as adjacent properties is accessed via an easement that connects to Goldsmith Lane to minimize traffic congestion along Bardstown Road. Sidewalks exist along Bardstown Road and an interior connecting sidewalk is proposed.

WHEREAS, the Planning Commission finds that, based upon the Applicant's submittals into the record and public hearing testimony that the Applicant's Detailed District Development Plan and proposed zone change to C-2 Commercial District comply with all applicable guidelines and policies of the comprehensive plan (Cornerstone 2020) in that they comply with all applicable policies under Compatibility Guideline 3, including, but not limited to, Compatibility Guidelines 3.1 (Scale and Patterns of Development) 3.3 (Residential Compatibility) 3.22 (Buffers) and 3.23 (Setbacks, Lot Dimensions, and Building Heights) since the site is located within a commercial activity center with a scale and pattern of development that is consistent with commercial uses in the Bardstown Road commercial corridor; and

WHEREAS, the Commission finds that the existing structure is compatible with adjacent commercial building materials, setbacks, lot dimensions, and building heights and no new construction is proposed. The proposed use is compatible with adjacent residential land uses since existing Landscape Buffer Areas are located adjacent to the multi-family residential properties on the north and west boundaries of the site to mitigate adverse impacts from commercial activities. The plan meets Guidelines 3.5 (Air Quality), 3.6 (Traffic Impacts), 3.7 (Noise), 3.8

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(Lighting), 3.9 (Visual Impacts), and 3.28 (Signs) since no additional construction is proposed, the land use will not change, the existing sign will remain, and no adverse impacts were found regarding air quality, noise, or lighting, which meets code requirements; and

WHEREAS, the Planning Commission finds that, based upon the Applicant's submittals into the record and public hearing testimony that the Applicant's Detailed District Development Plan and proposed zone change to C-2 Commercial District comply with all applicable guidelines and policies of the comprehensive plan (Cornerstone 2020) in that they comply with all applicable policies under Guideline 6, including, but not limited to, Guideline 6.6 (Activity Centers) since the site is located along a major arterial roadway at the intersection of an Interstate Highway, which provides adequate access and helps to alleviate adverse affects upon adjacent properties; and

WHEREAS, the Planning Commission finds that, based upon the Applicant's submittals into the record and public hearing testimony that the Applicant's Detailed District Development Plan and proposed zone change to C-2 Commercial District comply with all applicable guidelines and policies of the comprehensive plan (Cornerstone 2020) in that they comply with all applicable policies under Guidelines 7.10 (Adequate Parking), 7.13 (Joint and Cross Access) and 3.16 (Unified Access) since on-site parking is provided and will be increased from 8 to 10 spaces, which exceeds the minimum parking requirement by 1 space, no new impervious surface is proposed, and an existing 30-foot access easement provides joint and unified access to the adjacent properties within the commercial corridor; and

WHEREAS, the Planning Commission finds that, based upon the Applicant's submittals into the record and public hearing testimony that the Applicant's Detailed District Development Plan and proposed zone change to C-2 Commercial District comply with all applicable guidelines and policies of the comprehensive plan (Cornerstone 2020), including, but not limited to, Guidelines 10.1 (Impact to Watershed), 10.3 (Impervious Surface), 10.11 (Stormwater Runoff), for flooding and stormwater management since MSD provided preliminary approval of the plan. In addition, the plan meets Guidelines 12.1 (Traffic), 12.3 (Mass Transit), 12.4 (Roads), 12.6 (Air Pollution), and 12.8 (Sidewalks) for air quality since air pollution control and transportation provided preliminary approval of the plan. Finally, the plan meets Guidelines 13.4 (Landscape Design Standards), 13.5 (Tree Canopy) and 13.6 (Buffers for Incompatible Uses) for landscaping since the plan complies with chapter 10

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requirements, although improvements to the existing Landscape Buffer Areas are encouraged to improve and enhance environmental aspects of the site; and

WHEREAS, The Commission finds that the proposal has received preliminary approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Department of Public Works, and the Metropolitan Sewer District; and

WHEREAS, The Commission finds the proposal to be in conformance with all other applicable guidelines of the Comprehensive Plan; now, therefore, be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the legislative council of the Louisville/Jefferson County Metro Government that the change in zoning **from C-1 Commercial to C-2 Commercial** on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Ernst, Carlson, Hamilton, Queenan, Wells-Hatfield, Blake, Abstain, and Adkins.

NO: No one.

NOT PRESENT: Commissioner Howard.

ABSTAINING: No one.

Development Plan

On a motion by Commissioner Wells-Hatfield, the following resolution was adopted:

RESOLVED, That the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan for Docket No. 9-34-06, subject to the following binding elements; **AND on condition** that the applicant agrees to work with staff regarding architectural elements on the sides of the building façade that is to include the replacement of the boarded windows; **AND on condition** that the applicant agrees to remove the remnants of a billboard on the north side of the property **IF** it is determined in the future that this property does belong to the applicant.

Binding Elements – Docket #9-34-06

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the

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- Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. The development shall not exceed 3,735 square feet of gross floor area.
 3. Signs shall be in accordance with Chapter 8 or as presented at the public hearing (16 square feet in area and 24 feet tall).
 4. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
 5. There shall be no direct vehicular access to Bardstown Road.
 6. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system (audible beyond the property line or permitted on the site).
 7. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 8. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
 9. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of

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the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.

10. The materials and design of the structure shall be substantially the same as depicted in the rendering as presented at the December 7, 2006 Planning Commission meeting.

The vote was as follows:

YES: Commissioners Ernst, Carlson, Hamilton, Queenan, Wells-Hatfield, Blake, Abstain, and Adkins.

NO: No one.

NOT PRESENT: Commissioner Howard.

ABSTAINING: No one.